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RECOVERY UNDER WORKMEN'S COMPENSATION ACT FOR INJURY SUFFERED IN INTERSTATE COMMERCE WHERE EMPLOYER WAS FREE FROM NEGLIGENCE.

In Winfield v. New York, C. & H. R. R. Co., 216 N. Y. 284, 110 N. E. 614, there appears to have been raised, for the first time, the question whether New York Workmen's Compensation Act was excluded from application to a carrier in interstate commerce by the Federal Employers' Liability Act, in that recovery under the latter depends on negligence, while under former act it does not. It was held by a unanimous court, one judge not voting and another being absent, that the federal act only refers to recovery for negligence, and does not exclude recovery by an employe in interstate commerce for an injury not arising out of negligence.

State opinion in such a question is not, of course, conclusive, as it remains for the U. S. Supreme Court to construe the purpose of the federal act and to determine whether that purpose would be interfered with by state law allowing recovery in non-negligence cases, when it declares that, so far as federal control goes, there must be negligence as a ground for recovery.

The New York court concedes, as other state courts declare, that all state laws regarding recovery by an employe injured in the course of employment are superseded by the federal act to the extent of its scope, and the inquiry is whether by its declaring, that a condition precedent to recovery is that an employer must be negligent, takes such an employer from under the police power of the state as to his being non-negligent in an industrial pursuit.

The New York court says, however, that the scope of the federal act is as to recovery based on negligence of employers, and does not cover what is embraced in police power as to recovery from an industrial establishment on other ground than negligence, and as confirming its view it speaks of the federal compensation act providing for recovery by federal employes, though liability does not depend upon the existence of negligence. This confirmation would seem to be very slight indeed, for the question finally comes back as to the scope of the federal employers' liability act at the time it was enacted. Indeed, the federal government might well have one theory of recovery as to employments under the commerce clause and a totally different theory as to recovery comes under laws not depending on the commerce clause.

When Congress was legislating in the Federal Employers' Liability Act as to carriers in interstate commerce was it doing this to put a limitation upon their liabilities for injuries in the performance of their functions? When, therefore, it prescribed that they should reward an employe injured by their negligence, impliedly was it said no other penalty should be put upon them?

If states go beyond this they put a burden on the instrumentalities of commerce, which Congress may have said they shall not bear. It might be deemed that these carriers would not be either so free or so able to serve the purposes of commerce as were they exempt from this burden.

Furthermore, let us inquire how this imposition under state law would work, if it is lawfully imposed?

An employe sues an interstate carrier on the theory of negligence by his employer resulting in injury. There is verdict for defendant. This is not conclusive, because it merely shows the employe should have proceeded under the state workmen's compensation act.

But suppose that, in the first instance, the employe proceeds under the state act, and the carrier sets up its negligence as

taking the case over to federal liability. Does the dismissal by a commission under a finding of negligence become conclusive in another suit?

We greatly doubt whether this finding by a commission would be a bar to proof of no negligence, for a judgment by a commission is not a judgment by a judicial tribunal. Indeed, we greatly doubt whether a commission can entertain such an issue, or, at least, whether it is expected to do this. Its judgment generally is to go for the employe irrespective of negligence or non-negligence.

But it certainly can be ousted of jurisdiction in negligence cases, where the employer is engaged in interstate commerce, and we doubt whether failure to object to procedure under the state act would preclude a carrier from showing afterward, that the subject-matter was not within a commission's jurisdiction. It is not accident that gives the court jurisdiction in such a case, but accident resulting from negligence. The two things are as distinct as are any other two things.

It seems to us, therefore, that if we get beyond the federal question involved, we are then confronted with the purpose of the state act, as shown by its procedure to ascertain the measure of liability. But to us it seems clear, that, if the federal act forbids any recovery from an employer except as arising out of negligence, this should be construed to mean that no penalty where there is no negligence should be imposed. The federal act is not alone for the protection of employes, but also it may be deemed for the protection of employers. The whole question, therefore, resolves itself into the inquiry, whether or not there is a strong negative pregnant in the federal act against any penalty being visited on a federal instrumentality where it is not at fault. As federal law has no office merely to right a civil wrong, but to protect federal means, this question ought to be answered in the affirmative.

NOTES OF IMPORTANT DECISIONS.

COMMERCE — TELEGRAM FROM ONE POINT TO ANOTHER IN SAME STATE WITH WIRE CROSSING BOUNDARY.—It became important under the rule in Arkansas allowing damages for mental anguish to determine whether a message was interstate or not, Western U. Tel. Co. v. Sharp, 180 S. W. 504, decided by Supreme Court of Arkansas.

The facts show that the message in question was sent from a point in the state and was relayed at a point outside of the state and from there sent on to its destination in the state.

The opinion refers to three cases where the same question was involved and all of them held that the message was not interstate commerce. The Arkansas Court says: "We think the sounder rule is to say that so far as a telegraph message is concerned, the right of control is exclusively with the state where the message is sent from one point to another in the state regardless of the fact that the state line is crossed and that such fact does not constitute interstate commerce."

While this rule is generally true, it is to be doubted whether it would apply to messages which are relayed, as this fact suggests a distinction from a message going direct from one point in a state to another in the same state though in its journey it crosses into anothe state.

DIVORCE. — DIRECTION OF DECREE FROM BED AND BOARD.—Under Rhode Island statute divorces from bed and board and future cohabitation until the parties be reconciled may be granted for the causes for which divorces from the board of marriages may and in judicial discretion "for such other causes as may seem to require the same."

In Walker v. Walker, 95 Atl. 925, Rhode Island Supreme Court granted such a decree under judicial discretion as to conduct "allying it in its moral attributes with adultery," that is for "conduct extending over a long period, although not amounting to acts of adultery, yet had such a character of licentiousness as allied it to that offense and was like it in kind."

It would seem there ought to be some way to have reconciliation made a matter of record of equal dignity as the decree thus set aside. The separation standing as justified, the reunion should rest on judicial decree as well. The court had no occasion to speak on this point in the case. The decree, however, pro-

vided for separate maintenance and how long that was to continue should be definitely marked and its cessation judicially shown.

An interesting point in procedure is to be noted as occurring in this case. The wife as appellant was allowed to have her amendment to have the decree under judicial allowed, but the Supreme Court ruled that, as required by statute, "respondent will be given an opportunity on December 20, 1915, to show cause why an order should not be made remitting the case to the Superior Court with direction to enter a decision granting to the petitioner a divorce from bed, board and future cohabitation with the respondent until the parties be reconciled," etc., etc.

The practice here indicated shows that, if evidence has been submitted in the court below, it will be given effect without remand because of error in lower courts refusing to consider it and give it effect. This statute is in the line of practical procedure, saving time, expense and numerous bites at a cherry.

CONSTITUTIONAL LAW — EXEMPTION OF MEMBERS OF LEGISLATURE FROM CIVIL PROCESS DURING LEGISLATIVE SESSION.—Illinois Supreme Court held that a statute of Illinois exempting members of its Legislature from the service of civil process during a legislative session was unconstitutional, in that it was not based on any reasonable classification, is a special law and that independently of such statute a constitutional provision exempting members of its Legislature from arrest during a session, except for treason or felony did not cover service of civil process. Phillips v. Browne, 110 N. E. 601. There was dissent upon the first ground by two judges.

There is diversity of view as to the second of the above propositions, but it is believed that the weight of authority is with the Illinois court in this holding, some early cases ruling that the privilege from arrest is not to be narrowly confined.

But it seems to us that the majority err in holding that there is no reasonable classifications for the validity of the statute as ruled.

It was said: "The members of the General Assembly constitute but a portion of the public officials chosen to transact the business of the state, and we perceive no good reason why they should be singled out as immune from service of civil process while engaged in the line of their duty any more than any other class of public officials. If the purpose of the provision is to prevent suits being brought against members of the General Assembly in foreign counties into which they may be required to go in the performance of their official duties, then the law applies only to a portion of the public officials of this state, who are at times required to leave their home counties to perform their official duties."

But this assumes that were there a law passed for exemption of such latter class of officials, it would not rest upon a proper classification. We think that compelling a public officer to leave his home county to perform a public duty in another county ought to exempt him from civil process in another county, or that a statute to this effect would be valid. There is not free locomotion on his part, but only that in obedience to a public duty. He ought to be made exempt from having to answer in an inconvenient jurisdiction because he is faithful to his public duty.

And so as to a legislator away from his home county, there ought to be no temptation to sacrifice his public duty to his private interests. It is but a slight step beyond this to give a member exemption from service of civil process in his home county. The statute being based generally on reasonable classification, would be maintained as to its incidental features.

As is well pointed out by the dissent, there exists classification in the facts, that a session of the legislature is only for a part of the year and that a member cannot perform his duties by deputy, but his personal presence is necessary.

BANKRUPTCY—LIEN OF JOINT JUDGMENT AGAINST HUSBAND AND WIFE ON ESTATE BY ENTIRETY.—In 1913 a joint judgment was obtained against a husband and wife. In 1914 he was adjudicated a bankrupt but the trustee made no claim upon property held in entirety. About two months after his discharge in bankruptcy, the wife died. The judgment creditor then sought to enforce his judgment against the property held in entirety, and it was ruled by Maryland Court of Appeals that this could be done. Frey v. McGaw, 95 Atl. 960.

The court said: "The discharge of the bankrupt was only personal to the debtor. It was entirely without effect as to any liens subsisting at the time."

But, if a general judgment is discharged by the discharge in bankruptcy, this is equivalent

to saying that it has been paid. If it has been paid, the lien certainly has passed out of existence. Where there is a special lien on specific property it is easily understood that the lien is not destroyed under the terms of the bankruptcy act creating an exception to the rule of discharge.

It seems to us that after the discharge of the bankrupt, this judgment remained only against the wife and had she survived the husband, it could have been enforced against the estate by entirety.

THE LAW IS CUSTOM, NOT REASON.

"Whatever is reason is law," is the popular way of expressing the error, while the classic employs such sayings as, "The law is the embodiment of reason," "The law is right reason."

Possessing more sense than learning, the laity mistake reason for law, while the profession, with more learning than sense, declare law reason.

Laying aside the meaning, if any, in these sayings, the grammatical construction makes law and reason equivalent terms, not one the property or quality of the other.

When, however, we discard words and substitute ideas, we readily perceive that neither is reason law nor law reason, for reason exists only in the mind, while law is manifest in action, in custom. This gives us the most comprehensive dictionary definition of law, universal uniform activity in matter, custom in men.

Custom, therefore, among men is law. What men are accustomed to they regard as law, as a rule of action, as binding, the older and more universal the more profound.

"Custom (law) is the king (dominant authority) of all men," said an ancient, wise and philosophizing Persian.

That a laudable custom (salutary law) of one nation has been a crime (infraction of custom) in another, confirms the rule.

Common custom is the common law, where reason, sense, common sense, that too much overworked term, has necessarily no part, for we have common customs, but no common sense.

Like travelers starting on a journey, but all choosing different ways, different modes of travel, and different conveyances, all eventually arriving at the same destination, all delighted with the trip from necessarily different motives, so common customs are eventually arrived at by diverse, individual —not common, collective sense.

If, now, reason be not law and common sense nonexistent, neither should opinion, more especially, be made law.

As the law is now sought to be administered, the opinion (judgment, conclusion), of the judge is what he thinks or determines the law, (the custom, the rule) to be, but this may or may not be the correct determination, chiefly because he has reasoned to a conclusion, instead of searching for a fact.

In ascertaining what the law is, the judge should be an investigator after fact; for, what the law is, is as much a question of fact as the acts of the parties, commonly called the "facts of the case."

No intuitive powers of mind or depth of reasoning can ever lead us to a principle of law, (a rule, a custom) or the supporting ground, any more than to a fact of history and the motive of the character involved; for the law (custom) is matter of history. A thing done is history, but why done is usually a question for speculation, and frequently unknown even to the actor himself; yet these speculations now make up the body of our law.

The correct determination of the law, therefore, is a historical inquiry and investigation to ascertain the custom, (the rule,

the law) applicable to the particular case under consideration.

Here, then, is the genus of an action: The parties have done or omitted certain things. These are judicially determined. Now, do or do not these things, (acts, facts) conform to the established and recognized custom (the law)?

To answer this, such custom (law) must be known and declared, laid down, shown, not as matter of opinion, judgment, conclusion, determination, resulting from any process of reasoning, but as matter of fact after investigation.

No difference, therefore, exists between the correct determination of the two controversies in a lawsuit, the FACT and the LAW. The *first* step is to determine the individual case (the acts, the facts), the *second*, the general, (the custom, the rule) both investigations for the ascertainment of facts, while the *third* is to measure the individual with the general, and this is the ascertainment of a fact, also.

This process differs not from the mathematical, for we have not two methods of reasoning. As between the moral and the mathematical, the difference is only in the definiteness of the terms, acts or facts in one, number in the other.

I am writing particularly of the common law, (the common customs of any country) of course, but what has been here said applies as well to statutes, only easier of determination.

Our judicial decisions are thus shown to be formulated in the exercise of opinion, reasoning about rules and principles, as controversies were settled in medieval and scholastic times, when the methods used bore no relation to the end sought. That these decisions are sometimes right, is merely fortuitous, as right things may be done in wrong ways. No improvement can be expected until the method is changed.

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LAWS AND REGULATIONS REGARDING THE USE OF WATER IN PAN-AMERICAN COUNTRIES*

Scope of This Discussion:—The proper utilization of the natural resources of the Pan-American countries is of the greatest importance to their internal development as well as to their industrial and political relations with each other.

Of all such resources, the fresh-water streams of these countries are ever present, ever renewed, and, therefore, inexhaustible, resources for industrial supremacy.

Unlike the fuel resources of coal and oil, the energy of the water fall is not latent, and, if not confined and utilized, it is forever wasted and becomes a part of the great useless waste of Nature which cannot be recouped.

Conservation of the natural resources of a country demands the greatest and most immediate prevention of this constant waste of energy from undeveloped water powers, and requires the greatest and most extensive utilization which can possibly be made consistently with proper protection of the interests of individuals and of the public at large.

The principal cause of this uneconomic waste is, in all cases, that legislation for the regulation and use of water resources, instead of promoting their use, has become an obstacle to their use. Legislation has not kept pace with the progress of the science of water-power development and use.

It is the main scope of this paper to summarize, with reference to the uses of water, and particularly of water powers, the laws, and regulations under public authority, existing in the Pan-American countries, and especially to note certain ways in which such laws are obstacles to that utilization of these resources which would otherwise be made, as well as to

*This article is a summary of the principal points made in an address by the author before the Second Pan-American Scientific Congress held in Washington, Dec. 27, 1915, to Jan. 8, 1916.

suggest possible remedies in such legislation.

General Sources of the Law:—In most Pan-American countries, with the exception of the United States, the sources of the law of water rights are, as other phases of their laws, Spanish law. The fundamental principles of the Spanish law, as applied in these countries, was further confirmed or modified by the introduction into their Colonial law of certain principles of the French law. Further modifications have been caused by local and partial recognition and adoption of principles of law which are more peculiarly those of the United States, where the law of waters is generally founded upon that of the English law. But in the United States, wide modifications from the English law have been made to suit the physical conditions peculiar to our country and not characteristic of the mother country to which the English law was adapted.

Spanish Law:—Until the independence, Spanish law was in force in Spanish America. Since then it has been modified by various codes modelled largely on the Napoleonic Codes. The *Siete Partidas*, the great medieval Code, divided "things" into common things (comunes),—those belong to private persons,—and those consecrated to the service of God. Common things were divided into (*a*) those common to all living creatures, as the air, rain water, the sea and its shores; (*b*) those common to all mankind, as rivers, ports, and highways; and (*c*) the common property of cities and towns to be used only by the inhabitants thereof, as fountains. Private rights in waters were recognized, but some rivers were taken to be the property of the King. Mill dams could be erected in public or private streams under a grant from the King. The ownership, use, and enjoyment of waters which arose and died within the confines of one estate, belonged to the owner of the land. The theory of governmental control of rights in rivers increased, especially for the protection of navigation and exclusive private rights could be acquired only by special Royal Privilege or an immemorial user.

Colonial Law:—While generally following the Spanish law, the Colonial private law reserved in the King the dominion of rivers in America; but laws of the Indies made waters, not granted to private parties, common to all. Confusion existed in the Colonial law and was increased by the introduction of the modern Codes based on the French Codes; and it is only in very recent years that the law has made any marked progress toward the solution of the puzzling questions left open by the Codes, as to the effect of the large arbitrary powers of granting special concessions exercised by dictatorial governments.

United States Law:—In the United States there are 20,000,000 kilowatts of water power so situated as to be commercially feasible for development, that is, susceptible of utilization at a profit, in case only reasonable conditions to development were imposed upon the investor. Of this number only about one-fourth are actually developed, and the other three-fourths are unnecessarily running to waste. Of this wasting water-power energy 75 per cent is located upon navigable streams, and is, therefore, under the laws of the United States, either directly or indirectly, subject to Federal legislation. This immense waste is due, primarily, to deficiencies in Federal legislation, and to a great extent also, to defects in State legislation.

Federal Legislation:—In the United States, the Federal government is one of expressly limited powers, all other powers of legislation and control being expressly reserved to the several States. The power of the Congress to regulate water powers on navigable streams arises solely from its constitutional power to "regulate commerce" between the States. It may, therefore, supervise water-power structures in navigable streams, in order that they may not interfere with navigation. But such regulations and statutes have been unrea-

sonably and unnecssarily restrictive of water power development, because they place prohibitive burdens upon private investors, not necessary for, and not consistent with, reasonable protection of navigation interests.

Water Powers on the Public Domain:—Permits for development of water powers on the public domain are granted by the Department having the lands in charge, and are revocable at will They are subject to such conditions as the Department may impose, not only when the permit is granted, but subsequently thereto. There is no power to make terms and conditions free from unlimited uncertainties as to tenure, and as to the burdens to be borne by the investor. Private capital has halted before such conditions; and, out of 5,000,000 kilowatts of water power on the public domain which are capable of commercial development, less than one-tenth has been developed.

Water Powers on Navigable Streams:—Under its power to regulate commerce, the Congress, in order to protect navigation interests, has passed certain "Dam Acts", with reference to water-power dams on navigable streams. Such structures are prohibited except by express consent of the Congress and under conditions imposed by statute and by the Department of War, whose approval of the structures and the terms of the permit must be obtained. By these Acts the term of the consent cannot exceed fifty years, and at the end of that period the investor has no rights. The power of revocation is reserved without adequate protection to the private investment made under the permit. There is no limit fixed as to the possible conditions and burdens which may be imposed as part of the permit or which may be added thereto afterwards.

These acts have been prohibitive of water-power development. The present administration is proposing remedial measures, by which obstacles to investment will be removed and water-power development encouraged.

Water Powers at Government Navigation-Dams:—The Federal Government sometimes builds, at its own expense, or in co-operation with private investors, navigation dams where there is an incidental water-power development of a size in excess of that necessary to operate the navigation-dam. Where the Government has acquired all the riparian rights, such excess water power belongs to the Government and can be leased to private users on such terms as can be obtained; and thus the investment-cost to the Government of navigation improvements may be diminished. In some instances the cost of improvement for navigation alone would be prohibitive, and it would also be prohibitive for water-power development alone. In such cases the policy is, to make a co-operative agreement between the private investor who desires the water-power development and the government which desires the navigation development; and both interests are served, at a reasonable investment-cost, by such co-operation.

State Legislation:—The Federal right of control for protection of navigation is paramount to the right of State control of streams, and also to the rights of individuals. Subject only to this paramount Fedderal right, the rights of the States and of the individuals thereof to develop and use water powers of both navigable and unnavigable streams, is fixed by the property laws of the respective States.

In most States east of the Mississippi River the English common law of riparian rights prevails, and the private owner of the riparian land has the right to develop and use the water powers appurtenant thereto. In other States, west of the Mississippi River, the law of riparian rights has been either repudiated or modified. There the rule of right by prior appropriation generally prevails, and the uses of water are subject to appropriation rights according to the law of the State.

The tendency of State legislation with reference to water powers is more and more that which has been noted to exist in the case of Federal legislation. The private property rights of riparian owners are attempted to be confiscated by legislation which views the control, and even the ownership, of water powers within the State, as belonging to the State or to the public, and as public resources for the purposes of revenue. This theory of State legislation is also repugnant to the property rights of individuals and has discouraged investments of private capital in water-power development.

Water Powers in South America:—South America, while affording magnificent water-power possibilities, is more sparingly supplied with oil and coal than any other of the continental land bodies of the world, with the possible exception of Africa. This southern continent is favored with the natural resources of coal and oil to only a comparatively insignificant degree. On the other hand, water powers are found in almost every part of South America, the Pampas country and the rainless district of Northern Chile being among the few exceptions.

In Chile, there are occasionally fuel famines, from lack of coal and oil fuel, causing loss and suffering. Nevertheless, it is the most favorably located country in the world for easy and comparatively inexpensive hydro-electric development. But such development has been slow.

In Peru, which has more coal and oil resources than other South American countries, the lack of transportation facilities makes the price of such fuel generally prohibitive. There, however, the practical opportunities for water-power development are very great, and the 75,000 kilowatts already developed are insufficient to meet the present, unsupplied demand.

In Bolivia, Ecuador, Colombia, Venezuela, and Paraguay, little has thus far been accomplished in hydro-electric development, but this retardation of development is due largely to the location of undeveloped water powers at too great a distance from populous communities to make transmission at the present time feasible. The same limitations of transmission, preclude the great population centers of the cities of Buenos Aires, Montevideo, La Plata, and others, from utilizing the water powers on the streams flowing into the Atlantic from the Eastern slope of the Andes.

In the Argentino-Uruguayan country, the great Mendoza River has a fall of 9,000 feet in a distance of 100 miles, which presents water-power possibilities unequalled anywhere in North America, except perhaps in Alaska. There is, at the present time, demanded by the population and the industries of the surrounding country, within easy transmitting distance, over 200,000 kilowatts of power, which is far less than the capacity of the Mendoza.

In British Guiana, the Potaro River presents the highest fall of great volume in the world. The river, 300 feet wide, drops 700 feet, and the immense energy from this cataract is wasting until increase in population and in industrial development shall create a demand warranting the expense of the long transmission lines necessary to bring the power to a market.

Defects in Spanish-American Laws:—But physical obstacles and the lack of appreciation of the opportunities open to commercial development are not the cause, in these southern countries, of the waste of water-power energy, the utilization of which is already commercially feasible. As in the United States, the first requisite for the promotion of water-power development, and, therefore, for the prevention of waste of this natural resource, is legislative encouragement to private investors, who must furnish the capital for hydro-electric development. The hazards incident to such investment, even under the most favorable laws and regulations, are very great. But the physical hazards may be overcome or diminished. Before such dangers capital does not show timidity.

What capital demands in such investments is certainty of tenure, and security from confiscation, sufficient to warrant dependence upon reasonable returns. such security can only be afforded by laws, which, at the same time that they protect the interests of the public, also protect the investments which shall be made in furtherance of the public interest in the utilization of water-power resources.

In none of the countries of Spanish-America are the laws formulated in such a way as to attract private investment. The fact that there are already such investments only indicates the certainty of much greater development in the immediate future in case unreasonable legislative hazards to investment are decreased or eliminated.

Water Rights in Spanish-American Countries:—In the remaining part of this paper is summarized the laws and regulations of water rights in the countries of Argentina, Chile, Colombia, Cuba and Porto Rico. Uruguay, Venezuela, Brazil, and Mexico.

Conclusion:—It is apparent that the conservation of water resources, through the utilization of the wasting water powers of the Pan-American countries, including the United States, can only be accomplished by the adoption of a legislative policy which shall invite private investment in such enterprises. The universal fault with existing policies of legislation, in these matters, is, that the prospective investor, asking for a grant, or concession, or permit, is viewed as one asking, for his own private benefit, a gift from the public. The theory is too much prevalent that, because water resources are a natural resource, they are, for that very reason, a purely public resource, and not by nature or by law for development in any other way than through the direct supervision of public authorities and for the exclusive and direct benefit of the public at large. But water powers are local in their very nature. The assertion of a right of benefit, through direct participation by the general public in the proceeds derived from the utilization of water powers, is an assertion that natural water powers are intended to produce only for the public treasury. Such a view of water-power resources leads to the legislative policy of imposing by statute the utmost burdens possible, and even impossible burdens, upon private investment. Experience has demonstrated that utilization of wasting water powers cannot be accomplished by their development by the public authorities; but only through the capital of private investors. Such investors, however, rightly demand that security for their investment which shall afford to them reasonable protection against confiscation and loss of their investment, and against failure to receive fair returns therefrom.

There are millions of dollars of capital in the hands of American financiers ready for investment in water-power developments, not only in the United States but in all of the Pan-American republics, but which are withheld from such investments because of the financial obstacles presented in these various countries through an almost universal absence of a legislative policy which will allow such investments to be made with reasonable safety.

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FRAUDULENT CONVEYANCES—CLAIM FOR TORT.

HENRY v. YOST, et al.

Supreme Court of Washington. Nov. 12, 1915.

152 Pac. 714.

A claimant ex delicto is a "creditor," within the meaning of the rule that conveyances may be set aside when made to defraud the grantor's creditors.

ELLIS, J. In February, 1911, A. H. Yost and J. W. Day, sheriff of Yakima county, wrongfully seized and converted a band of sheep belonging to James Henry. On August 30,

1912, Yost and wife were indebted to the Outlook State Bank in the amount of $3,300. On that day they executed to H. E. Schroeder, cashier of the bank, and wife, a chattel mortgage covering their personal property, and a quitclaim to their farm near Outlook, and received from him a trust agreement, which declared that the property was deeded to Schroeder, to be held by him in trust for Mrs. Yost, and covenanted that upon demand the property would be reconveyed to her, or to whomever she should direct, for her separate estate. Subsequently Henry sued Day and Yost for the conversion of the sheep seized by them, and on February 25, 1913, the jury in that action returned a verdict in favor of Henry for the value of the sheep. Judgment upon this verdict was entered by the clerk, but no formal judgment was ever signed and entered. An execution was issued upon this judgment directed against the property of Yost, and returned by the sheriff nulla bona.

On July 10, 1913, Henry commenced this action against Yost and wife and Schroeder and wife. The complaint alleged the institution of the action by Henry against Yost and Day, service on and appearance of Yost, the trial of the cause, resulting in the verdict against Yost, the entry of a judgment thereon, and the absence of an appeal therefrom or modification thereof; alleged that the judgment was on account of a community obligation; alleged that the conveyance by Yost and wife to Schroeder was made with intent to defraud plaintiff in the collection of any judgment he might obtain, that the conveyance to Schroeder was made without consideration, and that Schroeder had no claim to the property, and further that Yost and wife had no other property out of which the judgment might be satisfied. Plaintiff prayed that the conveyance be declared void and the property subjected to the lien of his judgment.

Upon the trial of the cause counsel for Henry introduced, over objection, the summons, complaint, and proof of service, the verdict, the clerk's minute entry of the judgment, and the execution in the case of Henry v. Yost. Schroeder testified that the quitclaim deed was given to secure the indebtedness to the bank, since reduced to $2,835 by various payments, and that, when this was paid in full, the understanding was that Schroeder should reconvey the property to Yost. Having proved the entry of the judgment in the Henry v. Yost action, the conveyance to Schroeder, and that the claim of Henry had not been paid, the plaintiff rested. The defendant thereupon moved for dismissal on the ground that the plaintiff had not proved a lien against the defendants, and that he had proved no fraud. The case was reopened to permit evidence of the value of the property, and at the close of this testimony defendant renewed his motion for dismissal, which was refused. The trial judge gave a written opinion, in which he concluded that Henry had failed to prove that he was a creditor of Yost when the quitclaim deed and trust agreement were executed and delivered to Schroeder; therefore the burden was on him to prove that Yost executed the deed to defraud subsequent creditors, and that, as he had failed to do so, the action should be dismissed, and a judgment of dismissal with prejudice was accordingly entered. A timely motion for new trial was made by the plaintiff and denied by the court. A motion to modify the judgment, to make the dismissal without prejudice, was likewise denied. This appeal is from the order denying the motion for a new trial, or, in the alternative, for a modification of the judgment, and from the judgment as entered.

[1, 2] The right to have conveyances made with intent to hinder, delay and defraud creditors set aside has long been recognized as a part of the common law of this state. Wagner v. Law, 3 Wash. 500, 28 Pac. 1109, 29 Pac. 927, 15 L. R. A. 784, 28 Am. St. Rep. 56. To attack the validity of a conveyance, the person asserting the fraud must be one who has been injured by the fraud; and accordingly a creditor of the debtor may so attack the conveyance. A conveyance made without consideration is presumptively fraudulent as to existing creditors of the grantor. However, there is no presumption that such a transfer was made with a view to defraud subsequent creditors. It becomes material, then, to determine whether Henry was a creditor of Yost and wife when the deed to Schroeder was executed.

[3, 4] It has been our uniform holding that a claimant ex delicto is a creditor, within the meaning of the rule that conveyances may be set aside when made to defraud creditors of the grantor. Bates v. Drake, 28 Wash. 447, 68 Pac. 961; Sallaske v. Fletcher, 73 Wash. 593, 132 Pac. 648, 47 L. R. A. (N. S.) 320, Ann. Cas. 1914D, 760; Allen v. Kane, 79 Wash. 248, 140 Pac. 534. Had Henry proved that his cause of action existed when the deed was given to Schroeder, he would have established a prima facie case of fraud, and the burden then would have been on the grantor and grantee to prove the validity of the conveyance.

[5] The only proof offered of this claim, however, was the record in the case of Henry v. Yost and Day. The judgment in that case is not even prima facie evidence, as against Mrs. Yost and Schroeder and wife, who were strangers to that judgment, of any indebtedness or liability of Yost to Henry prior to the time it was rendered. Eggleston v. Sheldon, 148 Pac. 575. To hold that as against Mrs. Yost and Scroeder it proves the previous existence of the alleged facts on which it was based and the time when those alleged facts occurred would be to bind Mrs. Yost and Scroeder by the results of a litigation in which they did not appear, of which they had no notice or knowledge, and in which they had no opportunity to participate. The judgment established the indebtedness of Yost to Henry, but did not of itself prove the previous existence of the facts on which it was based. No other evidence of the indebtedness was introduced; consequently Henry did not establish that he was a creditor of Yost when the conveyance was made, and did not show a prima facie case of fraud. The judgment did prove him to be a creditor as of the date it was rendered, which was six months after the execution of the deed.

[6, 7] Henry, having proved himself to be a subsequent creditor, could, by showing that the conveyance was made with intent to defraud him, have had it set aside and the property subjected to the lien of his judgment. The burden of such a showing was on him, and he failed to meet it. No evidence was introduced, except the judgment in the tort action, to show that the deed was given in anticipation of the judgment, and we have found that the judgment alone was ineffectual to prove the cause of action then existing against Yost. The appellant, then, has failed to prove either that he was a creditor when the deed was executed, which would have put upon Mrs. Yost or Schroeder the burden of vindicating the deed, or that the conveyance was made to defraud him as a subsequent creditor. Failing in both, he has not established his right to have the deed set aside and the property subjected to the lien of his judgment. The trial court properly dismissed the action.

Judgment affirmed.

NOTE.—*Holder of Claim for Tort as an Existing Creditor.*—It seems true that the great weight of authority supports the ruling in the instant case, that an existing claim for unliquidated damages founded on a tort constitutes the injured party a creditor under statutes avoiding conveyances for fraud, the judgment subsequently obtained relating back and by the judgment the requisite status is given to attack the conveyance. No doubt some of the cases are based on the phraseology of statutes, but as a general principle the ruling in the instant case is supported.

It becomes only of interest to notice a few opposing cases.

In Evans v. Lewis, 30 Oh. St. 11, it was held that the possessor of a claim for damages arising out of tort at the time of an alleged fraudulent conveyance did not become a creditor until judgment had been rendered in his favor. As a subsequent creditor he had the right to prove, if he could, that there was intent in the making of the conveyance to defraud him as a subsequent creditor. See also Detweiller v. Lomison, 10 O. C. D. 95.

In Langford v. Fly, 26 Tenn. (7 Hump.) 585, it was said: "A party who has a right of action for a tort cannot be deemed a creditor until he obtains a judgment. The wrongdoer is in no sense a debtor by reason of the wrong, until the judgment of a court shall fix upon him a pecuniary burden for the redress of the wrong."

In Michigan it was assumed by the court that the rule was that a claim for damages being unliquidated and sounding in tort, could not become a debt until it had been prosecuted to judgment, and the case in which this assumption was made was distinguished upon its facts. Clinton v. Rice, 79 Mich. 354, 44 N. W. 790.

In Meserve v. Dyer, 4 Me. (4 Greenl.) 52, it was held that in a case for trespass the court below rightly held that plaintiff was not a creditor prior to obtaining judgment: "Until judgment all was contingent and uncertain; had Jacobs (the defendant) died before judgment, the right of action would have died also."

In Gebhart v. Merfeld, 51 Md. 322, the conveyance was set aside, where claimant only had a right of action for tort, because the statute of 13th Eliz. Ch. 5 was said to embrace conveyances "made to the end, purpose and intent to delay, hinder or defraud creditors and *others* of their just and lawful actions." It extends not only to creditors, but to all others who have cause of action or suit or any penalty or forfeiture, and embraces actions of slander, trespass and other torts."

In Green v. Adams, 59 Vt. 602, 10 Atl. 742, it was held that a claim founded in tort was not within the statute regarding fraudulent conveyances, the word "right" in the statute being synonymous with debt or duty. For similar ruling see Fox v. Hills, 1 Conn. 299; Fowler v. Frisbie, 3 Conn. 324.

In McInnis v. Wicassett Mills, 78 Miss. 52, 28 So. 725, the conveyance objected to was made after action was begun on a claim founded in tort, and the court said: "We reject as unsound the proposition that complainant, whose claim rested on tort, could not come within the protection of the statute. In determining who is a creditor, the statute must be liberally construed, and it protects, at least as against actual fraud, one who, at the time of the conveyance, is suing the grantor in an action of tort."

Missouri Court of Appeals fairly represents supporting cases to the instant case in saying: "Clark became a creditor the day the assault

conferred on him a valid demand for damages against his assailant." Carrel v. Meek, 155 Mo. App. 337, 137 S. W. 19. C.

CORRESPONDENCE.

WORK OF THE CHICAGO SOCIETY OF ADVOCATES.

Editor Central Law Journal:

A course of lectures under the auspices of the Chicago Society of Advocates will be delivered in the South Room of the University of Chicago Law School, University Avenue and Fifty-Eighth street (Midway Plaisance), on the dates below given, at 7:30 p. m. Each lecture will consist of two parts about fifty minutes in length, separated by a brief intermission.

The History and Nature of the Art of Advocacy.—Eugene E. Prussing, Thursday, Jan. 6.

Jury Trials.—Friday, Jan. 14. James G. Condon.

Criminal Cases.—Tuesday, Jan. 18. Fletcher Dobyns.

Cases in Appellate Courts.—Thursday, Jan. 20. Albert M. Kales.

Cases Before International and Parliamentary Tribunals.—Monday, Jan. 24. John M. Zane.

Chancery Cases.—Thursday, Jan. 27. Hon. Jacob M. Dickinson.

All the classes of the Law School will attend and the members of the Society and their friends are invited to come.

Respectfully,
HERBERT HARLEY, Secretary.

[The undersigned received the above announcement with interest and pleasure. This society is a new venture which we had occasion to approve in these columns not many months ago. See 81 Cent. L. J. 112. We enjoyed the privilege of meeting many of the gentlemen who are mentioned above at a dinner given by the society last October. At that time the writer was informed that one of the first definite undertakings by the society would be the introduction of a thorough and competent course on advocacy in each of the Chicago law schools.

This work is deserving of hearty commendation and its successful fruition will be regarded with anxious interest by all members of the profession who have the proper administration of the law at heart. A. H. Robbins.]

ESTATES BY ENTIRETIES.

Editor Central Law Journal:

In the report of In re Finch v. Cecil et ux, on page 460 of No. 26, Vol. 81, in the Central Law Journal, appears the following:

"In others it has been held that estates in entirety were abolished inferentially by such statutes, changing the relation of married women as to the control of their property, as in Mississippi, Nebraska, West Virginia and Michigan, and in England. 21 Cyc. 1202, etc."

This is a misstatement of the law in Michigan. The Michigan case cited in 21 Cyc., 1202, is Dowling vs. Salliotte, 83 Michigan, 131. The compilers of Cyc. overlooked in re Appeal of Nellie B. Lewis, 85 Michigan, 340, in which case, on page 346, the court directly overrules Dowling vs. Salliotte on this point of estates by entireties.

I thought you might be interested to call attention to this error, as I see it is not noticed in your note.

Yours very truly,
JESSE ARTHUR.

Battle Creek, Mich.

BOOK REVIEWS.

THE HAGUE CONVENTIONS AND DECLARATIONS OF 1899 AND 1907.

This work containing the declarations of those conventions and the names of the governments participating therein, and by what governments notified, and by what governments there were reservations, is a wonderfully interesting book. It is very lamentable that these conventions did not provide some way of preventing nations from starting the world-wide conflict now pending. It would seem that no provision could better preserve peace than for aggrieved nations to submit their differences to the arbitrament of others before war begins.

But this collection by James Brown Potter, Director of the Division of International Law in the Carnegie Endowment for International Peace may be of value as a basis for other steps not only in the prevention of war, but for

its settlement if it does come, just as the 1899 convention was the forerunner of the 1907 convention.

This book is by Oxford University Press, the American branch of which is in New York, at 35 West 32d street, this volume issuing in 1915.

TIFFANY'S FORM BOOK.

This book, by Mr. Francis B. Tiffany, is a very handy, well conceived and excellent book for forms, other than court forms and those peculiar to corporations acceding according to requirement of the law of their incorporation.

It contains forms for deeds, wills, mortgages, acknowledgments, building contracts, publishers' and authors' contracts, with statutory forms by states, say, for example, chattel mortgages.

There are forms strictly to be followed and others serve by way of suggestion to meet the needs of particular cases, and the language and general construction of the latter are valuable to the practitioner.

They are particularly useful as convincing a draftsman that nothing is omitted in drawing up contracts and agreements for particular needs and all is embraced that is required and nothing purely superfluous is included.

Mr. Tiffany has prepared a very useful work that lawyers should appreciate and its arrangement is such that easy effort to find the particular thing desired is readily appreciated.

The volume, including an excellent index, is handy in size, printed on a light weight, tough paper, bound in buckram and comes from the well-known publishing house of Vernon Law Book Company, Kansas City, Mo., 1915.

BOOKS RECEIVED.

The Monroe Doctrine, an Interpretation. By Albert Bushnell Hart, Ph. D., Litt. D., LL. D., Professor of Science of Government in Harvard University; with colored map. Price, $1.75; Boston. Little, Brown & Co. 1916. Review will follow.

Readings on the Relation of Government to Property and Industry. Compiled by Samuel P. Orth, Professor of Political Science in Cornell University; author of "Socialism and Democracy in Europe," etc. 1915. Price, $2.25. Ginn and Company. Boston, New York, Chicago, London. Review will follow.

HUMOR OF THE LAW.

Champ Clark of Missouri, Speaker of the lower House of Congress, feeling it his turn to enliven a story-telling party, said that a man—not in Missouri—found himself in such financial straits that he couldn't pay his debts. A creditor, who also needed money, made a tearful appeal for at least partial settlement.

"I'm very sorry," the delinquent dolefully informed him, "but I cannot pay you anything this month."

"That's what you told me last month," complained the creditor.

"Well, I kept my word, didn't I?"—St. Louis Post-Dispatch.

Congressman Frank E. Wilson of New York, tells of an Irishman who had been arrested on the charge of assault and battery and was up for trial.

"Pat," said the Magistrate, "you are charged with having punched Dennis McGinley in the face. What have you to say about it?"

"Shure, Yer Honor," meekly answered the prisoner. "Oi did it in fun. Oi only meant to have a little joke wid him."

"You did, did you?" said the court, attempting to inject severity into his tone.

"Well, in the future I would suggest that you bear in mind that your right to a joke ends where Dennis' nose begins."

"Peter Cooper, stand up."

The raw-boned "poor-white trash," holding his ragged hat in one hand and the tail of his shabby coat in the other, walked slowly up to the stand.

"Yes, Judge."

"You are accused of profanity in a public place."

"I guess I did it, Judge. Nigger was tryin' to steal ma hoss."

"But you should know better than to take the name of the Lord in vain, Mr. Cooper.

"It warn't in vain, Judge, you jes' ought ter have seen that nigger run!"—Case and Comment.

A story told us by one of our subscribers is apropos to the question as to whether officers of trust companies or other corporations should act as attorneys in the settlement of estates:

A banker was acting as the attorney in administration proceedings upon an estate for which he was also administrator.

The parties interested all being of lawful age, he prepared for them and had them sign a paper styled "voluntary appearance," wherein he made them to say, "and we hereby waive appearances."

WEEKLY DIGEST

Weekly Digest of ALL the Important Opinions of ALL the State and Territorial Courts of Last Resort and of ALL the Federal Courts.

Copy of Opinion in any case referred to in this digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Accord and Satisfaction**—Compromise.—A sum received by an administrator held not an accord and satisfaction, where it was part of a larger sum due under a mining lease.—Tustin v. Philadelphia & Reading Coal & Iron Co., Pa., 95 Atl. 595.

2. **Admiralty**—Contracts.—A contract for payment of a commission for obtaining a charter for a vessel, based on the amount of freight earned, held not maritime, and a suit thereon not within the admiralty jurisdiction.—Rhederei Actien Gesellschaft Oceana v. Clutha Shipping Co., U. S. D. C., 226 Fed. 339.

3. **Adverse Possession**—Dedication.—Where a city's acceptance of alleys as shown on a plat was shown, the mere adverse possession of the dedicator's successor would not avail him in a suit in equity to enjoin the city from opening such alleys.—Zollinger v. City of Newton, Iowa, 154 N. W. 611.

4.——Remaindermen.—The grantee of a life tenant under a deed of the fee is not in adverse possession as to the remaindermen until the termination of the life estate.—Cooley v. Lee, N. C., 86 S. E. 720.

5. **Alteration of Instruments**—Estoppel.—Where the holder of a note had materially altered same, he was not entitled to seize in replevin and sell the property described in the mortgage given to secure the note.—West v. Naten, Okla., 152 Pac. 342.

6. **Appearance**—General.—Where a party moves on nonjurisdictional, as well as jurisdictional, grounds to vacate a judgment, he enters a general appearance which has the same effect as though entered at the trial.—Montgomery v. Wm. Cameron & Co., Okla., 152 Pac. 398.

7.——Voluntary.—Where defendant announced in open court that, having heard the sheriff was looking for him, he came of his own motion into court, the action constituted a voluntary appearance and submission to the jurisdiction of the court.—Stephens v. Ringling, S. C., 86 S. E. 683.

8. **Arson**—Evidence.—It is not error in a prosecution for arson to exclude copies of deeds tending to show title of the burned property in another than the person named in the indictment, where it is not claimed that possession or claim of possession by another can be shown.—Tinker v. State, Tex. Cr. App., 179 S. W. 572.

9. **Attorney and Client**—Lien on Fund.—Where council has been employed to obtain or create a fund for both parties, his fees, if he prevails, may be paid out of the funds; but where the interests of the parties are adverse only, the legal taxable costs can be allowed.—Lewis v Gaillard, Fla., 69 So. 797.

10. **Bankruptcy**—Creditor.—The owner of timber, which one subsequently adjudged bankrupt has contracted to cut and remove, may insist on payment of damages by the trustee for breach of contract, as well as the price, before delivering the timber, and is not a general creditor as to such damages.—Mankins v. Forward Movement Syndicate, Cal. App., 152 Pac. 313.

11.——Exemption.—Bankrupt held entitled to exemption, notwithstanding failure to claim it in deed of trust for benefit of creditors, which under the state law deprived him of such exemption.—In re Gorman, U. S. D. C., 226 Fed. 361.

12.——Mortgage.—Under Code Iowa, § 2906, and Bankr. Act, § 47a, claim of vendor of personalty, who had unrecorded mortgage, written or oral, to secure part of purchase price, held invalid as against vendee's trustee in bankruptcy.—In re Cooper's Estate, U. S. D. C., 226 Fed. 317.

13.——Partnership.—Questions presented by partner not joining co-partners in petition for adjudication of bankruptcy of the firm, but insisting that he paid to the creditors of the firm his part and had been released, will arise before referee under order of reference on adjudication of bankruptcy of firm.—In re Lenoir-Cross & Co., U. S. D. C., 226 Fed. 227.

14.——Preference.—Referee in bankruptcy held to have power to order that objections to a claim be sustained, and the claim disallowed, unless the claimant surrender, pursuant to Bankr. Act, § 57g, a preference received.—McCulloch v. Davenport Savings Bank, U. S. D. C., 226 Fed. 309.

15.——Widow's Allowance.—The right of the widow of a deceased bankrupt, under Bankruptcy Act, § 8, to allowance from his estate under state law, was not affected by his assignment for the benefit of creditors within four months of his adjudication.—In re Scott, U. S. C. C. A., 226 Fed. 201.

16. **Banks and Banking**—Deposits.—Where H. sold notes to defendant bank, which placed the price to H.'s credit, and, after honoring checks for part of it, refused further payment, H.'s assignee could recover the balance of the deposit, with interest.—Zwiener v. First State Bank of Odessa, Minn., 154 N. W. 615.

17.——Notice.—Party induced to pay draft to bank by fraud held entitled to recover payment notwithstanding cashier's attempted appropriation of the funds in payment of a note after receiving notice of the fraud.—Oklahoma State Bank v. Bank of Central Arkansas, Ark., 179 S. W. 509.

18.——Officers.—Defendant in an action on a note cannot escape liability on the ground that the cashier of the plaintiff bank released him from liability on the note, since such action by the cashier was beyond his powers and therefore void.—First Nat. Bank of Lumberton v. Lennon, N. C., 86 S. E. 715.

19.——Trust Company.—Where a trust company retained full commission for part performance, held that parties interested adversely to the company, after its insolvency, were entitled to a reduction from the commission charged, but could prove their claim only as general creditors.—Commonwealth v. Tradesmen's Trust Co., Pa., 95 Atl. 574.

20. **Bills and Notes**—Conditional Delivery.—Where it had been agreed that the note sued on should be invalid unless certain persons subscribed for a certain amount of stock of a corporation, held, that defendant should have been allowed to prove failure to secure such subscriptions.—Northern Savings Bank v. Kelly, N. D., 154 N. W. 650.

21.——Consideration.—Where a note signed by defendants as guarantors was given on sur-

render by plaintiff of the note of the original debtor, while the plaintiff was to forbear suit until maturity, the note was supported by consideration.—Miller & Lux v. Dunlap, Cal. App., 152 Pac. 309.

22. **Carriers of Goods**—Bill of Lading.—On delivery of goods to carrier on an open bill of lading, the consignor cannot recover for negligence in transportation causing increased freight charge, in the absence of proof that he paid the freight or retained some interest in the property.—Ellington & Guy v. Norfolk Southern R. Co., N. C., 86 S. E. 693.

23.——Switch Track.—Under a contract between defendant and plaintiff railroad, making a switch track plaintiff's property, and limiting defendant's use thereof to shipment purposes, defendant could not use it for storing its own cars, without being subject to demurrage charges.—St. Louis, I. M. & S. Ry. Co. v. National Refining Co., U. S. D. C., 226 Fed. 357.

24.——Contributory Negligence.—Knowledge of the danger of getting beyond the cage in an elevator held not to show contributory negligence as a matter of law because plaintiff, a boy, stepped forward when the operator slowed the car and reached out as if to open the door.—National Life Ins. Co. of the United States of America v. McKenna, U. S. C. C. A., 226 Fed. 165.

25.——Invitee.—A person injured while standing on a station platform in a narrow space between tracks cannot set up the invited use of the space, where it would be apparent to a reasonably prudent man exercising due care that it was dangerous.—Cook v. St. Louis, I. M. & S. Ry. Co., Ark., S. W. 501.

26.——Mileage Ticket.—Presentation of mileage book by original purchaser for transportation of another accompanying him does not justify a forfeiture of the book under rule providing for forfeiture if presented by any other than original purchaser.—Southern Ry. Co. v. Campbell, U. S. S. C., 36 S. Ct. 33.

27.——Negligence.—A passenger is negligent in seeking his exit from an end of the car, the platform of which is disarranged, only where he has, or by the exercise of proper care should have, discovered the disarrangement.—Fern v. Pennsylvania R. Co., Pa., 95 Atl. 590.

28.——Protection.—A carrier must protect passengers against misconduct of other passengers and strangers when the same may be reasonably expected and prevented.—Virginia Ry. & Power Co. v. McDemmick, Va., 86 S. E. 744.

29.——Trespasser.—Where decedent, a trespasser, attempted to board a train in motion, in violation of statute, it was the conductor's duty to prevent him from boarding by the exercise of all reasonable means, including a reasonable degree of force.—Hawthorne v. Delano, Iowa, 154 N. W. 590.

30. **Commerce** — Intoxicating Liquor. — No state regulation of the shipment of intoxicating liquors is valid unless the shipments to which it applies are intended for use in violation of the state law, and thus specifically within the Webb-Kenyon Act.—Commonwealth v. White, Ky., 179 S. W. 469.

31.——Trading Stamps.—A nonresident company selling on mail orders trading stamps to merchants in West Virginia, and redeeming same with premiums shipped from the state of its residence, being engaged in interstate commerce, within Const. U. S. art. 1, § 8, cl. 3, cannot be required to pay a state license tax under Code 1913, c. 32, § 2, cl. j (sec. 1114).—Sperry & Hutchinson Co. v. Hill, W. Va., 86 S. E. 748.

32. **Constitutional Law**—Due Process of Law. —The long and short haul clause of Const. Cal. art. 12, § 21, as amended October 10, 1911, held not a denial of due process of law.—California Adjustment Co. v. Southern Pac. Co. U. S. D. C., 226 Fed. 349.

33.——Excise Tax.—Construing Act Aug. 5, 1909, § 38, imposing an excise tax on net income of corporation as preventing a realty corporation from deducting from gross income interest paid on mortgage in excess of its capital stock, held not unconstitutional as an arbitrary and unreasonable classification.—Anderson v. Forty-Two Broadway Co., U. S. S. C., 36 S. Ct. 17.

34. **Contracts**—Condition Precedent.—Plaintiff, who contracted to invent and manufacture machinery for defendants, upon their failure within a reasonable time to post guaranty as required by the agreement, could treat posting as condition precedent and elect to terminate contract.—Burpee v. Guggenheim, U. S. D. C., 226 Fed. 214.

35.——Estoppel.—Acquiescence of owner in the contractor's payments for labor without taking vouchers, called for by the contract, held not to estop him to plead the breach in action for money alleged to be due on the contract.—Camp & De Puy v. Lauterman, Ore., 152 Pac. 288.

36.——Illegality.—An agreement by a creditor who had charged the debtor with crime to receive the amount of the debt and stop prosecution would be illegal and void.—Western Union Telegraph Co. v Smith, Tex. Civ., 179 S W. 548.

37.——Latent Ambiguity.—Where the terms of a contract are ambiguous, the meaning put on the instrument by the contracting parties controls; but where it is unambiguous, and the intent not in doubt, the construction of the parties is not controlling.—Tustin v. Philadelphia & Reading Coal & Iron Co., Pa., 95 Atl. 595.

38.——Liability.—Contract between bank and contractor that bank should pay for labor and materials furnished on its building held to render the bank liable directly to persons furnishing materials, though the contract was not made directly with them.—Carolina Hardware Co. v. Raleigh Banking & Trust Co., N. C., 86 S. E. 706.

39.——Public Policy.—An advertising popularity contest, based on deceitful methods in counting votes, making nominations, etc., is fraudulent, and a contract based thereon is against public policy.—American Mfg. Co. v. Crittenden Record-Press, Ky., 179 S. W. 456.

40. **Conversion**—Wills.—A testatrix's children held not to take any interest in land, which was to be managed by her executor for 10 years and then sold, so a child's mortgage did not, where he died before the time for division of the proceeds, defeat the rights of his issue who were to take in his stead.—Maginn v. McDevitt, Ill., 109 N. E. 1038.

41. **Corporations** — Contracts. — Where one contracting to purchase stocks and bonds failed to pay part of the price, the adverse party could retain them and sue for damages, or deliver them and recover contract price.—Busch v Stromberg-Carlson Telephone Mfg. Co., U. S. C. C. A., 226 Fed. 200.

42.——Estoppel.—When officers of a corporation make a contract for it, which inures to its benefit, and the results are enjoyed by it, it is estopped to deny the officers' authority to make the contract.—Bankers' Trust Co. of Amarillo v. Cooper, Merrill & Lumpkin, Tex. Civ. App., 179 S. W. 541.

43.——Promoters.—Where complainant, the holder of an option for the purchase of land, agreed to share with the promoter of a corporation any profits, he cannot receive the profits and at the same time demand part of the promoter's compensation from the corporation for acquiring the land.—Dunlap v. Twin City Power Co., U. S. C. C. A., 226 Fed. 161.

44.——Promoters.—Subscribers to the stock of a corporation to be organized cannot complain of the manner in which funds devoted to promotion expenses were apportioned, where no sums in addition to those to be allowed were devoted to that purpose.—Edwards v Johnston, Wyo., 152 Pac. 273.

45. **Courts**—Appeal and Error.—Judgment of Supreme Court of Philippine Islands affirming judgment reversing decision of insular collector as to classification, under Philippine Tariff Act, of an imported commodity, can be reviewed in the Federal Supreme Court only by appeal under Act July 1, 1902.—Gsell v. Insular Collector of Customs, U. S. S. C., 36 S. Ct. 39.

46. **Covenants**—Personal.—A provision that the grantee construct a driveway along the granted premises, which the grantors could use for access to their adjoining lot while friendly relations existed between the parties, held a personal covenant, terminable on friend-

ly relations ceasing.—Gerling v. Lain, Ill., 109 N. E. 972.

47. **Creditors' Suit**—Judgment.—Property in one person's hands cannot be subjected to another's general debt, unless the debt has been reduced to judgment, or there is a proceeding coincidentiy to reduce it to judgment.—Hardy v. Hardy, Ga., 86 S. E. 780.

48. **Criminal Law**—Judicial Notice.—The recorder or judge of a municipal court can take judicial notice of an ordinance of the city, but a judge of the superior court, in reviewing a judgment of a municipal court, cannot.—Berry v. City of Milledgeville, Ga. App., 86 S. E. 744.

49. **Curtesy**—Taxes.—Where defendants bought plaintiff's estate by the curtesy, without investigating whether taxes were paid, and there were no misrepresentations they would not be relieved of payment, on the ground the estate was forfeited for nonpayment of taxes under Kirby's Dig. § 7132.—Ward v. Ward, Ark., 179 S. W. 495.

50. **Damages**—Liquidated.—Under contract to furnish beer to defendants, who were to sell complainant's beer exclusively, amount stipulated as damages for breach held to be liquidated damages, and not a penalty; the amount stipulated not being unreasonable or disproportionate.—Bartholomae & Roesing Brewing & Malting Co. v. Modzelewski, Ill., 109 N. E. 1058.

51.——Nominal.—Physician suing persons causing loss of practice among members of employes association in emergency cases held entitled to nominal damages only, where testimony as to loss of practice applied to his entire activities among the employes.—Peek v. Northern Pac. Ity. Co., Mont., 152 Pac. 421.

52. **Deeds**—Delivery.—Where husband and wife convey the former's land and deliver the deed, the nonpayment of the consideration does not defeat the title which the grantee later reconveys to the wife.—Etheredge v. Aetna Ins. Co., S. C., 86 S. E. 687.

53.——Dedication.—Though the parties to a deed intended to leave a strip and dedicate it for a street, the town was not bound to accept the land as part of the street.—Sugg v. Town of Greenville, N. C., 86 S. E. 695.

54. **Descent and Distribution**—Expectancy.—Where the prospective heir of a living person releases his expectancy to the ancestor, a court of equity will enforce the contract for the benefit of the other heirs.—Donough v. Garland, Ill., 109 N. E. 1015.

55. **Easements**—Honest Belief.—Belief by the owner of land that he was entitled by law to lay a pipe line across the property of another will not, where it was not communicated, give rise to an easement by prescription; the laying of the line being authorized by contract.—Barlow v. Frink, Cal., 152 Pac. 300.

56. **Escrows**—Deposit of Deed.—The deposit of a deed of escrow, to be delivered to the grantee on payment of the consideration stated, passes no interest prior to the performance of the condition.—Etheredge v. Aetna Ins. Co., S. C., 86 S. E. 687.

57. **Estoppel**—Foreclosure.—Although mortgagor who permits property not covered by mortgage to be sold under foreclosure is estopped from questioning legality of sale, his creditors are not.—Coguenhem v. Trosclair, La., 69 So. 800.

58.——Life Tenant.—That one thought and said she had only a life estate does not estop her or her assigns to assert her title in fee against any one not hurt by anything she did.—Boyce v. Mosely, S. C., 86 S. E. 771.

59.——Silence.—Silence works an estoppel only when one party withholds information which the other party does not have, or does not possess the means of obtaining, and which he should have to protect his rights.—Tustin v. Philadelphia & Reading Coal & Iron Co., Pa., 95 Atl. 595.

60.——Subsequently Acquired Property.—Where a life tenant conveys and warrants the fee to a stranger in property devised, and thereafter acquires the interest of one of the remaindermen, the title to the remaindermen's interest is in the stranger by estoppel.—Cooley v. Lee, N. C., 86 S. E. 720.

61.——Witness.—A grantor in a deed, absolute in form but in fact a mortgage, signing as a witness a deed to a grantee of the mortgagee, was not estopped to assert that it was a mortgage; the subsequent grantee having notice.—McLemore v. Bickerstaff, Tex. Civ. App., 179 S. W. 536.

62. **Executors and Administrators**—Setting Aside Deed.—In setting aside a conveyance of trust property made by an executor to himself professedly in satisfaction of a debt, and decreeing a sale of the land, the court should provide for payment of such debt, but not until it shall have been established by proper evidence.—Ash v. Wells, W. Va., 86 S. E. 750.

63. **Highways**—Abandonment.—Where, with the consent of public highway authorities, a way ceases to be used, and another is acquired, the old will be regarded as abandoned after enough time to clearly indicate an acceptance by the public of the new.—People v. Cleveland, C., C. & St. L. Ry. Co., Ill., 109 N. E. 1064.

64.——Driving to Right.—Plaintiff, whose buggy was driven on the extreme right of the traveled part of a highway, might assume that the driver of an approaching team would turn out in time to avoid a collision, and that he was paying some attention to where he was going.—Muenlbauer v. Klockner, Wis., 154 N. W. 624.

65.——Jurisdiction.—A special statute creating a district to improve a road running through an incorporated town held not invalid as invading the jurisdiction of the town by authorizing the improvement of a highway constituting one of the streets thereof.—Wall v. Kelley, Ark., 179 S. W. 486.

66.——Road District.—A special statute creating a road district for the improvement of a road running through an incorporated town held not void because it included property in such town without the consent of a majority in value of the property owners first obtained.—Nall v. Kelley, Ark., 179 S. W. 486.

67. **Homestead**—Insurance.—Value of homestead is to be determined at date of allotment, and hence insurance money collected on dwelling burned before the allotment cannot be included in determination of its value.—Ketcham v. Ketcham, Ill., 109 N. E. 1025.

68. **Husband and Wife**—Community Property.—Contract between married man owning an option to buy realty and a corporation held not invalid because wife did not assent thereto as is necessary in Porto Rico as to community property.—Parker v. Monroig, U. S. S. C., 36 S. Ct. 42.

69. **Indemnity**—Fellow Servant.—Where a subcontractor's servant recovered for injuries, subcontractor, seeking to recover over from contractor, could not avoid the charge of contributory negligence in work which it had intrusted to its foreman on the ground that he was a fellow servant of the injured servant.—Washington & Berkeley Bridge Co. v. Pennsylvania Steel Co., U. S. C. C. A., 226 Fed. 169.

70. **Indians**—Enrollment.—A deed executed by an Indian September 6, 1911, to his allotment held void by reason of the grantor's minority, where the enrollment records show him to have been 10 years of age on September 20, 1900; the date of his enrollment being regarded as his birthday.—Linam v. Beck, Ok., 152 Pac. 344.

71.——Selections of Land.—Selections by living Indians only were contemplated by General Indian Allotment Act, which, after providing for allotments, provided that, if any one entitled to an allotment failed to select within four years, the Secretary of the Interior could direct a selection by an agent, and by agents for orphan children.—La Roque v. United States, U. S. S. C., 36 S. Ct. 22.

72. **Insurance**—Foreign Corporation.—Continuance of obligation of existing policies in foreign life insurance company held by resident policy holders, together with receipt of premiums at home office, is not doing business within the state justifying privilege tax imposed under Ky. St. 1909, § 4226.—Provident Sav. Life Assur. Soc. v. Commonwealth of Kentucky, U. S. S. C., 36 S. Ct. 34.

73.——Principal and Agent.—Person dealing with insurance agent without knowledge of limitation of authority held entitled to assume that he was authorized to issue particular policy and company was estopped to assert the contrary.—International Fire Insurance Co. v. Black, Tex. Civ. App., 179 S. W. 534.

74. **Internal Revenue**—Excise Tax.—Construing Act Aug. 5, 1909, § 38, imposing an excise

tax on net income of corporation as preventing a realty corporation from deducting from gross income interest paid on mortgage in excess of its capital stock, held not unconstitutional as an arbitrary and unreasonable classification.—Anderson v. Forty-Two Broadway Co., U. S. S. C., 36 S. Ct. 17.

75. **Judgment**—Default.—Mere forgetfulness due to one giving his attention to more important matters does not entitle him to have a default judgment set aside on the ground of excusable neglect.—Hales-Bryant Lumber Co. v. Blue, N. C., 86 S. E. 724.

76.——Rendition.—The "judgment" of a court is what the court pronounces; its "rendition" is the judicial act by which the court settles and declares the decision of the law upon the matters at issue; and its "entry" is the ministerial act by which the enduring evidence of the judicial act is afforded.—Moore v. Toyah Valley Irr. Co., Tex. Civ. App., 179 S. W. 550.

77. **Larceny**—Receiving Stolen Property.—A person not connected with the original taking of property is not guilty of theft, even though he received the stolen property knowing it to have been stolen.—Whitfield v. State, Tex. Civ. App., 179 S. W. 558.

78. **Logs and Logging**—Contract.—Where contract for removal of timber requires payment of stumpage and also removal of timber cut before a certain date, every requirement is a portion of the consideration, and a contractor cannot establish performance by a showing of payment for stumpage alone.—Mankins v. Forward Movement Syndicate, Cal. App., 152 Pac. 313.

79. **Master and Servant**—Contributory Negligence.—Code 1913, c. 15p, § 26 (sec. 682), denying the benefit of defenses of contributory negligence and assumption of risk on failure of certain employers to take the benefit of the Workmen's Compensation Act, held constitutional.—De Francesco v. Piney Mining Co., W. Va., 86 S. E. 777.

80.——Employment. — "Permanent employment" ordinarily means employment for an indefinite period, which, in the absence of some special consideration, may be arbitrarily severed at any time by either party.—McKelvy v. Choctaw Cotton Oil Co., Okla., 152 Pac. 414.

81.——Hours of Service.—A railroad, permitting telegraph operators to work a greater number of hours than prescribed by Hours of Service Act and failing for several days to make reports, held subject to but one penalty for each employe.—United States v. Baltimore & O. R. Co., U. S. D. C., 226 Fed. 220.

82.——Safe Place to Work.—An employer should maintain and keep in reasonably safe repair the appliances used, and not expose the employe to dangers not ordinarily or reasonably incident to the employment.—O'Donnell v. Bell Telephone Co. of Pennsylvania, Pa., 95 Atl. 579.

83.——Safety Appliance.—A safety belt is an "appliance" within Code Supp. 1913, § 4999—a3 (Acts 33d Gen. Assem. c. 219), providing that an employe shall not be deemed to have assumed the risk by continuing in the work where it is the employer's duty to furnish safe "appliances."—Boone v. Lohr, Iowa, 154 N. W. 591.

84.——Workmen's Compensation Act.—Under Workmen's Compensation Act, § 1, employe falling into a hole in floor, while hurrying to assistance of workmen who had fallen in, held killed by injury "arising out of and in the course of the employment."—Dragovich v. Iroquois Iron Co., Ill., 109 N. E. 999.

85.——Workmen's Compensation Act.—Under St. 1913, § 2394—3, right to compensation for disease caused by the furnishing of impure drinking water held governed by the Workmen's Compensation Act, being an incident to the employment.—Venner v. New Dells Lumber Co., Wis., 154 N. W. 640.

86. **Mechanics' Liens**—Building Contract.—Building contract, reserving to owner right to see that money should be applied to payment of material and labor, held to authorize contract by him with materialman to pay for materials.—Morgan-Austin Co. v. Eassy, S. C., 86 S. E. 673.

87. **Mines and Minerals**—Royalty.—The lessee held required to pay a right of way charge in addition to the minimum monthly royalty on coal mined, and that when it failed to mine the requisite amount in any month it was required to make up the difference between the royalties and the minimum, and also to pay the right of way charge.—Tustin v. Philadelphia & Reading Coal & Iron Co., Pa., 95 Atl. 896.

88. **Monopolies**—Extent.—That a coal company has acquired and holds a large percentage of the undeveloped coal lands in the anthracite region, and mines and sells a large percentage of the total quantity produced, does not in itself constitute it a monopoly, in violation of the Sherman Anti-Trust Act.—United States v. Reading Co., U. S. D. C., 226 Fed. 229.

89. **Mortgages**—Injunction.—Where a mortgage authorizes sale on default in payment of either of four notes, but there is no provision that the whole indebtedness shall become due on such default, on payment of note then due, a sale under the mortgage will be restrained until another note is due.—Frink v. Tyre, N. C., 86 S. E. 773.

90. **Municipal Corporations**—Constitutional Law.—The Act of 1913 (Hurd's Rev. St. 1913, c. 23, § 154) amending Acts 1891, p. 142, § 6, providing for public hospitals so as to authorize the issuance of warrants in the nature of bonds, held not to violate Const. art. 9, § 12, limiting municipal indebtedness.—Holmgren v. City of Moline, Ill., 109 N. E. 1031.

91.——Ordinance.—Ordinance of city in anti-saloon territory prohibiting display of liquor advertisements held beyond the power of the city to adopt.—Haskell v. Howard, Ill., 109 N. E. 992.

92. **Negligence**—Assurance by Master.—Assurance of bridge company's engineer that plaintiff subcontractor might place steel work on a green concrete pier held negligence, proximately resulting in injury to plaintiff's workman from failing of the pier.—Washington & Berkeley Bridge Co. v. Pennsylvania Steel Co., U. S. C. C. A., 226 Fed. 169.

93.——Defined.—Negligence ordinarily arises from the failure to perform some duty or obligation required by law to be performed under the relations and conditions existing by one to another, which duty or obligation may be either positive or negative, or both.—Gogol v. Baltimore & O. R. Co., U. S. D. C., 226 Fed. 224.

94. **New Trial**—Partial Issue.—A successful plaintiff cannot obtain a new trial as to the issue of damages or an increase in damages, and at the same time hold the general verdict in his favor.—Banaszek v. F. Mayer Boot & Shoe Co., Wis., 154 N. W. 637.

95. **Parent and Child**—Maintenance.—Where a father has agreed with his wife to pay her a stipulated sum per week for support of herself and children, and such sum is inadequate, the court will compel him to pay a greater sum.—Rennie v. Rennie, N. J. Ch., 95 Atl. 571.

96. **Partition**—Parol Agreement.—Agreement of children of decedent to divide his land as indicated by undelivered deeds to them, decedent's widow not signing the agreement, held valid as a parol partition of the land; she being estopped by acquiescence.—Van Zanten v. Van Zanten, Ill., 109 N. E. 986.

97. **Payment**—Voucher.—A "voucher" is an instrument showing on what account or by what authority a particular payment is made, or that the services of payee entitled him to payment, and cancelled checks are not vouchers, as they do not show such essentials.—Camp & Du Puy v. Lauterman, Ore., 152 Pac. 288.

98. **Pleading**—Amendment.—Defendant was not entitled to amend his answer during the trial to set up a deed of trust, with a defense based thereon, where the circumstances put him on inquiry.—Ablon v. Wheeler & Motter Mercantile Co., Tex. Civ. App., 179 S. W. 527.

99. **Principal and Agent**—Independent Contractor.—Where a bank contracted that its contractor for a new building should complete it, but the bank should pay for labor and materials, the contractor became the bank's agent, not an independent contractor.—Carolina Hardware Co v. Raleigh Banking & Trust Co., N. C., 86 S. E. 706.

100.——Sale of Stock.—That a person selling corporate stock inquired of the buyer relative to a note received by him on a resale of the stock, and did not demand payment for the

stock, held not to relieve him from liability to pay therefor, on the ground that he was a mere selling agent.—Shade v. Llewellyn, Pa., 95 Atl. 583.

101.——Undisclosed Principal.—Failure of principal to disclose himself with his knowledge that agent has assumed charge of the transaction, makes the agent one for all purposes of the transaction, and the principal cannot assert lack of express authority against one relying in good faith on the assumed authority.—Weigell v. Gregg, Wis., 154 N. W. 645.

102. **Principal and Surety**—Release of Surety.—Failure of the payee of a note to sue the principal on the oral request of the sureties sued, made long after the maturity to the attorney who had the note for collection, held not to release the surety sued.—Miller v. State, Okla., 152 Pac. 409.

103. **Public Lands**—Patents.—Patents procured from the United States by fraud are not void but voidable, and the government may elect to rescind the patent or ratify and sue for damages.—United States v. Koleno, U. S. C. C. A., 226 Fed. 180.

104. **Quieting Title**—Adverse Possession. — A claim of adverse possession by defendant whose elevator was located in part upon the grounds of the plaintiff railroad was a cloud upon the plaintiff's title entitling it to a decree quieting title.—Des Moines & Ft. D. R. Co. v. Whitaker, Iowa, 154 N. W. 604.

105. **Railroads**—Burden of Proof.—Where it was admitted that live cinders emitted from a locomotive started the fire, the burden was on the defendant railroad company to show that the locomotive was properly equipped and handled prudently.—Fuller v. Chicago, R. I. & P. Ry. Co., La., 69 So. 804.

106.——Proximate Cause.—It is not every act of negligence on the part of a person injured or killed at a crossing that will defeat a recovery of damages, but only those negligent acts materially contributing to the accident.—Chicago & E. R. Co. v. Biddinger, Ind. App., 109 N. E. 953.

107. **Receivers**—Appointment.—An order of the chancery court, requiring bond as a condition to its refusal to appoint a receiver, held valid, notwithstanding the defendant tenant had before given bond upon appeal from a judgment for restitution of the land.—Parsille v. Brown, Mich., 154 N. W. 569.

108. **Reformation of Instruments.**—Description.—Where lessor and lessee at time of lease intended that lessee should have all the land owned by the lessor, an erroneous description by metes and bounds will be corrected on petition of the lessee.—Gimbel Bros. v. Tolman, Wis., 154 N. W. 628.

109. **Sales**—Acceptance.—Buyer held to become liable for price by accepting the goods or the proceeds of a sale thereof from a carrier after previously refusing to accept them.—McDonnell Foundry & Machine Co. v. Glacier Metal Co., Miss., 69 So. 769.

110. **Specific Performance**—Personal Covenant.—Equity cannot make and enforce an efficient decree for enforcing against the covenantor's grantee a personal covenant for construction of a driveway for use by the covenantor's grantor so long as friendly relations between the parties exist.—Gerling v. Lain, Ill., 109 N. E. 972.

111. **Street Railroads**—Negligence. — Where plaintiff drove north on the north-bound street railway track for over 250 feet at a walk, without looking behind to see if a car was coming, he was negligent.—Niederfriedrich v. Milwaukee Electric Ry. & Light Co., Wis., 154 N. W. 639.

112. **Taxation**—Exemption. — Any contract exemption from taxation created by charter of canal or banking company, limiting exemptions of such property as is occupied and used for canal navigation, did not pass to its grantee and lessee, where the canal company leased the canal under right given by Act N. J. March 14, 1871 (P. L. p. 444.)—Morris Canal & Banking Co. v. Baird, U. S. S. C., 36 S. Ct. 28.

113.——Inheritance Taxes.—In proceeding to assess inheritance taxes, the fact that the claim against the estate which was made the basis of a deduction did not correctly state the nature of the obligation cannot be taken advantage of.—People v. Lefens' Estate, Ill., 109 N. E. 965.

114.——Notice.—Failure to state correctly the amount claimed for descriptions in notice to redeem from tax sale or excessive demand for descriptions does not make notice defective if it correctly states the amount paid for taxes. —Rogers v. Davison, Mich., 154 N. W. 571.

115.——Statute of Limitations.—While plaintiffs, seeking to quiet title to unimproved land, are not barred by the statute of limitations, being under coverture, their action for equitable relief is barred by their laches in failing to pay taxes for 45 years, 14 of which followed defendant's purchase from the state.—McGill v. Adams, Ark., 179 S. W. 489.

116. **Telegraphs and Telephones.** — Illegal Agreement.—Where a telegraph agent converted money paid by the cousin of one accused of crime in order to stop proceedings, held, that creditors who instituted the proceedings had no right of action against the telegraph company; title not having passed, and the agreement being illegal.—Western Union Telegraph Co. v. Smith, Tex. Civ. App., 179 S. W. 548.

117.——Negligent Delay.—The burden of proof is on the defendant telegraph company, in an action for damages for negligent delay in delivery of a telegram, to show that, in spite of the delay, the plaintiff by due diligence could have arrived in time.—Gainey v. Western Union Telegraph Co., N. C., 86 S. E. 716.

118. **Torts**—Respondeat Superior.—Railroad yardmaster who posted notice to employes not to call a particular physician in case of accident held liable to the physician; it being unauthorized by his instructions or by an employes' beneficial association.—Peek v. Northern Pac. Ry. Co., Mont., 152 Pac. 421.

119. **Trusts**—Construction.—A deed to one for life, and after that some sort of an estate to others, is not a trust deed, so as to be free from the unyielding rules for construction of a common-law deed.—Boyce v. Mosely, S. C., 86 S. E. 771.

120.——Estoppel. — Judgment creditor of grantor held not estopped from collecting judgment out of lands of grantee, who did not register deed, because the creditor's wife purchased part of the land from the grantee with money furnished by him; such transaction not constituting a resulting trust, but a gift.—Maxton Realty Co. v. Carter, N. C., 86 S. E. 714.

121. **United States**—Contracts.—Failure to reduce a contract made by authority of Secretary of Navy to a writing signed by the contracting parties as required by Rev. St. § 3744 (Comp. St. 1913, § 6895), does not preclude enforcement of contract by the government, though it is enforceable against the government.—United States v. New York & Porto Rico S. S. Co. U. S. S. C., 36 S. Ct. 41.

122. **Waters and Water Courses**—Constitutional Law.—St. 1913, p. 785, is not unconstitutional as imposing a tax to pay for irrigation improvements on all property within a county irrigation district, irrespective of the benefits conferred by the improvement.—Bliss v. Hamilton, Cal., 152 Pac. 303.

123. **Wills**—Agreement Between Adults.—The widow and children of a decedent, who were the only persons having any interest in the estate, no rights of any creditors being involved, could by agreement make any disposition of the property they chose, regardless of the will.—Van Zanten v. Van Zanten, Ill., 109 N. E. 986.

124.——Testamentary Capacity.—The test of testamentary capacity is whether a testator at the time of the execution of his purported will had sufficient mind and memory to enable him to understand the particular business in which he was then engaged.—Bowers v. Evans, Ill., 109 N. E. 989.

125.——Testamentary Capacity. — Old age, physical and mental weakness, signature while in home of beneficiary subject to his association, lack of opportunity for others to see testator, revocation of former will, absence of blood ties, disinheritance of children, and procurement of execution by beneficiary are evidence sufficient to support a finding of undue influence.—In re Mueller's Will, N. C., 86 S. E. 719.